

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST**

FMS INVESTMENT CORP., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	No. 18-204C (consolidated)
THE UNITED STATES,)	
)	Judge Thomas C. Wheeler
Defendant,)	
)	
and)	
)	
PERFORMANT RECOVERY, INC., and)	
WINDHAM PROFESSIONALS, INC.)	
)	
Intervenor-Defendants.)	

NOTICE

Defendant, the United States, respectfully submits this notice in reply to the response to defendant’s March 19, 2018 notice that four of 19 plaintiffs filed on March 20, 2018, and to provide a more definitive schedule for the analysis that the Department of Education (ED) is currently conducting. It is important to state that our intent with our March 19 notice was not to foster delay or to avoid anything in this litigation – indeed, as it stated, we are open to continuing with the litigation. However, once it became clear that this litigation was likely to end in the near future, the Court and the other parties deserved to know that fact. Plaintiffs complain that our confirmation that “[a]ll options remain on the table” is a sign that ED has not done any work on this issue. To the contrary, the fact that a full range of options is under consideration, which necessitates a review of the procurement, the solicitation, and the program, means that a great deal more work is required than if only a corrective action defined by elements of the complaints was under consideration. That broad-based review takes time. But, we also

understand that the open-ended timeline ED's review requires may be a cause for frustration. Accordingly, we are willing to commit to filing an update with the Court no later than April 11, 2018, that will set a firm date for the announcement of ED's final decision on how ED intends to proceed. In the interim, we are willing to continue with the litigation. If the other parties or the Court prefers a stay of the litigation during that period, ED will, as we previously advised, continue its voluntary stay of the award decisions under protest (the injunction affecting the account recalls would also remain in place).

Respectfully submitted,

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Director

s/ Patricia M. McCarthy
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